

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 381

[Docket No. 2006-2 CRB NCBRA]

Noncommercial Educational Broadcasting Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment certain royalty rates for use of a musical work in a Public Broadcasting Service-distributed program pursuant to the noncommercial educational broadcasting statutory license contained in the Copyright Act. The rates published herein correct an error in the rates published for comment in the **Federal Register** on April 17, 2007.

DATES: Comments and objections, if any, are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Comments and objections may be sent electronically to crb@loc.gov. In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, D.C. 20024-0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE, Washington, D.C. 20559-6000. If delivered by a commercial

courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE, Washington, D.C., and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE, Washington, D.C. 20559-6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2007, the Copyright Royalty Judges ("Judges") published a notice in the **Federal Register** requesting comment on proposed regulations that set rates and terms for the noncommercial educational broadcasting statutory license under section 118 of the Copyright Act, title 17 of the United States Code, for the license period 2008-2012. 72 FR 19138. These proposed rates and terms were part of a joint proposal submitted on March 15, 2007, by the following parties to this proceeding: the American Council on Education ("ACE"); the American Society of Composers, Authors and Publishers ("ASCAP"); Broadcast Music, Inc. ("BMI"); the Harry Fox Agency ("HFA"); the National Music Publishers' Association, Inc. ("NMPA"); National Public Radio, Inc. ("NPR"); the National Religious Broadcasters Noncommercial Music License Committee ("NRBNMLC"); the Public Broadcasting Service ("PBS") and SESAC, Inc.

Section 801(b)(7)(A) of the Copyright Act allows the Judges to adopt such a proposal,

which would be binding on all copyright owners and public broadcasting entities,¹ provided that:

(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Accordingly, the Judges published the joint proposal, with certain modifications, pursuant to this provision. See 72 FR at 19139 (April 17, 2007). Comments were due on or before May 17, 2007.

In response to the notice, the Judges received only one comment, which was jointly submitted by NPR and PBS. The parties stated in pertinent part that due to “an inadvertent administrative error [in the parties’ joint proposal], some of the NPR and PBS proposed royalty rates . . . were incorrectly transcribed,” thereby making the rates proposed in § 381.7(b)(1)(i) “incorrect.” Joint Comments of National Public Radio and Public Broadcasting Service, filed May 15, 2007, at 2. They then set out the intended rates, which were lower than those published on April 17. Id.

¹ A “public broadcasting entity” is defined as a “noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)” of section 118.

Consequently, as required by section 801(b)(7)(A), the Judges are publishing for comment rates correcting those previously proposed in § 381.7(b)(1)(i). Therefore, the public may comment and object only to the rates contained in today's notice of proposed rulemaking. Those who do comment and object, however, must be prepared to participate in further proceedings in this docket to establish rates and terms for the section 118 license.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend Part 381 to Chapter III of title 37 of the Code of Federal Regulations, as proposed on April 17, 2007 (72 FR 19138), to read as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for proposed part 381 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 381.7 is amended by revising paragraphs (b)(1)(i)(A) through (D) as follows:

§ 381.7 Recording rights, rates and terms.

* * * * *

(b) * * * (1)(i) * * *

2008-2012

(A) Feature	\$114.09
(B) Concert feature (per minute)	\$34.26

(C) Background \$57.66

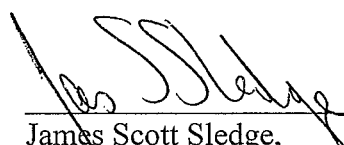
(D) Theme:

(1) Single program or first series program \$57.66

(2) Other series program \$23.41

* * * * *

Dated: September 20, 2007



James Scott Sledge,
Chief Copyright Royalty Judge.

[BILLING CODE: 1410-72-P]

C O P Y R I G H T R O Y A L T Y B O A R D

Library of Congress · Copyright Royalty Board · P.O. Box 70977 · Southwest Station · Washington, DC 20024-0977
T: 202/707-8380 · F: 202/252-3423 · www.loc.gov/crb

September 20, 2007

Mr. Ray Mosley
Office of the Federal Register
800 North Capitol St., N.W.
7th Floor, Suite 700
Washington, D.C. 20001

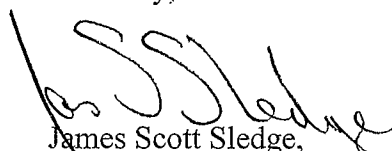
Dear Mr. Mosley:

Enclosed for publication are the required copies of Docket No. 2006-2 CRB
NCBRA "Noncommercial Educational Broadcasting Statutory License, Notice of
proposed rulemaking."

This document is coded in WordPerfect 12.0 format with diskette; the document
and WP disk are identical.

Please call Gina Giuffreda at (202) 707-7658 when this document has been
approved for publication in the **Federal Register**.

Sincerely,


James Scott Sledge,
Chief Copyright Royalty Judge,
Copyright Royalty Board

Enclosures:
1 original and 2 copies
of document
1 diskette